



# STATE MINING AND GEOLOGY BOARD

## *EXECUTIVE OFFICER'S REPORT*

---

For Meeting Date: November 14, 2002

**SUBJECT: Item 14 – Issuance of an Administrative Penalty to Diamond Quarry, CA Mine ID #91-09-0003, Loring Brunius, Owner/Operator; El Dorado County, for Failure to Comply with an Order to Cease and Desist All Surface Mining Operations Issued July 11, 2002**

---

**BACKGROUND:** At its regular business meeting on March 27, 2002, the State Mining and Geology Board (SMGB) determined to issue to Diamond Quarry (Quarry) a Notice of Violation (NOV) pursuant to Public Resources Code (PRC) §2774.1. The NOV cited the Quarry's failure to correct six long-standing violations of the operator's reclamation plan, and its failure to maintain a financial assurance. The continuance of these violations was confirmed by an on-site inspection of the Quarry on February 7, 2002.

According to the NOV, which was received by the operator's agent on April 1, 2002, the operator was provided 30 days from receipt of the NOV in which to correct the cited deficiencies or the operator may be subject to an Order to Comply from the SMGB.

On May 9, 2002 at its regular business meeting, the SMGB adopted findings that the Quarry was continuing to operate out of compliance and in violation of its reclamation plan, El Dorado County Code Chapter 8.36, and the requirements of the Surface Mining and Reclamation Act of 1975.

Based on the operator's lack of response to the NOV and the hearing on May 9, 2002, the SMGB at its regular business meeting on July 11, 2002 issued to the Quarry pursuant to its authority under PRC §2774.1 an Order to Cease and Desist All Surface Mining Operations. The Order's effective date is September 12, 2002 at 6:00 P. M. The Order was received by the Quarry's agent on July 17, 2002.

In addition to this Order, the Quarry is subject to the following Orders issued by the SMGB;

- July 20, 2001, Order to Comply: ordered to correct violations
- August 16, 2001, Administrative Penalty for failure to comply with July 20<sup>th</sup> Order; penalty amounts accruing;
- December 13, 2001, Administrative Penalty for failure to maintain an adequate financial assurance; penalty amounts accruing;
- July 11, 2002, Order to Comply for failure to correct violations

---

*EXECUTIVE OFFICER'S REPORT*

---

**EXECUTIVE OFFICER'S ANALYSIS OF ADMINISTRATIVE PENALTY CRITERIA:** Pursuant to PRC §2774.1(c), the SMGB must take under consideration several criteria when setting the amount of administrative penalty. These criteria are discussed below:

**A. Nature & Extent** (*Degree and substance of violation*)

1. Is the case one of total failure to provide approved reclamation plans or financial assurances, or to report and pay fees? Is the failure one of intentional delay and obfuscation, or refusal to comply?
2. Is the case one of partial failure to provide approved documentation, or pay partial fees? Is the failure a "clerical error", or a misunderstanding of what was required and when?

**Analysis:** The Quarry has been made aware of violations to its reclamation plan, financial assurances, and the Surface Mining and Reclamation Act of 1975, by the SMGB on numerous occasions, including public hearings and through written correspondence, since February, 2001. The conduct of the operator manifests an intentional and willful disregard for the law and refusal to comply.

**B. Circumstances** (*Outside influences*) What are the circumstances affecting the operator's failure to comply?

1. Were the circumstances avoidable had the operator acted on his/her own behalf? How responsible was the operator in attempting to control, to take charge of, "circumstances" that directly affected his/her business?
  - (a) Should the appellant had a more active role in directing hired consultants?
  - (b) Should the appellant had a more active role in obtaining responses from government agencies?
2. Were the circumstances particularly unique, or were they encountered by other operators and could have been anticipated?
  - (a) How many other surface mines are already in compliance within the lead agency?
  - (b) Is it reasonable to assume that the appellant should have been aware of circumstances encountered by other compliant operators?

**Analysis:** The evidence clearly substantiates that the Quarry acted willfully on its own behalf to ignore the Cease and Desist Order. The Quarry continues to conduct surface mining operations on a daily basis. The issue faced by the Quarry is not unlike that faced by every other surface mine operation in the State: the requirement to remain within the approved scope of its reclamation plan and the financial assurance requirements of the Surface Mining and Reclamation Act of 1975. On December 13, 2001 the SMGB issued an Administrative Penalty to the Quarry for failing to maintain a financial assurance. The Quarry was formally

noticed of its failure to maintain a financial assurance following an inspection of the mine on February 7, 2002 with a Notice of Violation issued on March 27, 2002, and again in public session on May 9, 2002.

**C. Gravity (*Financial costs or economic losses to others*)**

1. What financial or economic burden has the lead agency had to bear as a result of this operator not complying?
  - (a) Has the lead agency had to expend excessive funds (personnel time and costs) to try to bring the appellant into compliance, thus increasing the amount of fees to be collected from the compliant operators to pay for the local SMARA administration?
  - (b) Has the lead agency had to redirect personnel away from other tasks, thereby delaying the implementation of those tasks and services, in order to deal with the non-compliant operator?

**Analysis:** The record clearly demonstrates that the staffs of the County of El Dorado, the Department of Conservation, the Office of the Attorney General, and the SMGB have devoted many hundreds of hours of personnel time attempting to bring the Quarry into compliance with its approved reclamation plan and with SMARA. Staff and resources from these organizations have been diverted from other important tasks because of the Quarry's willful disregard for the law and refusal of the Quarry to comply with orders issued by these agencies.

**D. Prior Violations (*History of compliance / cooperation*)**

1. Has the operator received Administrative Penalties in the past?
  - (a) For the same violation at the same or a different operation?
  - (b) For a different violation at the same or different operation?
2. Has the appellant been cooperative regarding past violations? Has the appellant paid previous penalties and made necessary corrections, or had to be referred to the Attorney General's Office for failure to respond ?

**Analysis:** The Quarry has a long history of noncompliance and non-cooperation. To wit the following:

9/24/91 -- Department of Conservation informs quarry of requirement for reclamation plan; DOC needs copy. The Quarry finally obtains a reclamation plan in August, 1997 (6 years later).

1/28/93 -- Department of Conservation issues administrative penalty for failure to file 1991 Annual Report.

6/7/93 – SMGB denies financial assurance appeal because quarry has no approved reclamation plan upon which to base estimates.

3/17/94 – DOC issues administrative penalty for failure to file 1992 Annual Report.

6/28/95 -- The DOC is granted a Stipulated Judgment (Sacramento Superior Court) against the Quarry in the amount of \$70,000 for penalties for failure to file annual reports, pay annual fees, and failure to submit reclamation plan and financial assurances.

12/17/96 – DOC sends notice to Quarry of failure to comply with Stipulated Judgment.

3/12/97 – DOC issues Cease Mining Order to operator for failure to have approved reclamation plan and financial assurance.

4/15/97 – SMGB upholds DOC Cease Mining Order.

10/1/97 – El Dorado County issues Notice of Violation to Quarry for failing to post financial assurances within 15 days of approval of reclamation plan, failed to sign indemnity papers for County, and violation of Conditions of Approval. This Notice of Violation is issued only one month after the County had approved the Quarry's reclamation plan.

4/21/99 – Site inspection by DOC, County and County consultants indicates that the site may not be in compliance with its reclamation plan; no revegetation test plots located, no test plot monitoring, and no soil testing sites were evident as reported in the County's previous Inspection Report on June 16, 1998. The Quarry is made aware of these findings.

1/09/01 – SMGB forced to obtain Court Warrants to conduct annual mine inspection.

5/18/01 – El Dorado County issues Cease and Desist Order to Quarry for violations of SMARA.

7/14/01 – SMGB issues Order to Comply to Quarry for violations of SMARA.

8/16/01 – SMGB issues Administrative Penalties to Quarry for failure to correct violations.

12/13/01 – SMGB issues Administrative Penalty to Quarry in the amount of \$18,000 plus \$500 per day for lack of financial assurance.

2/7/02 – SMGB conducts annual inspection after having to obtain a Court Warrant.

7/11/02 – SMGB issues Order to Comply to Quarry for violations of its reclamation plan and SMARA.

7/11/02 – SMGB issues a Cease and Desist Order to Quarry for operating without a financial assurance.

**E. Degree of Culpability (*Personal knowledge and behavior*)**

1. Could it be assumed that a reasonable person in that position would have known that documents or fees were due?
2. How long has the operator known that plans, reports, fees or financial assurances were due prior to the issuance of the penalty?
3. How much notice was given by the Department / Lead Agency ?

**Analysis:** The record clearly demonstrates that the operator has long known of the necessity to comply with its reclamation plan and financial assurance, and of its violations of the Surface Mining and Reclamation Act of 1975. The Quarry has received multiple notices of these requirements since at least 1991, and attended numerous County and SMGB hearings regarding the requirements of compliance. The owner of this Quarry, also, operates another surface mine within the County, and has demonstrated knowledge of the requirements of SMARA regarding that operation, as well. The operator has failed to provide financial assurances for his second mine, Weber Creek Quarry, and continues to operate that mine in violation of a Cease and Desist Order.

**F. Economic Savings (*Financial or economic gains to self*)**

1. Has the operator received a financial or economic benefit from avoiding SMARA requirements?

***EXECUTIVE OFFICER'S REPORT***

- (a) Not preparing a reclamation plan (reclamation plan and CEQA).
- (b) Not posting a financial assurance (actual value or paying premiums).
- (c) Not securing local permits (permitting fees and inspection costs).
- (d) Not paying annual reporting fees to Lead Agency and State.

2. What length of time has the operator enjoyed these economic savings. The extent of any economic savings realized by the operator may depend on the length of time the appellant has been out of compliance .

**Analysis:** The Quarry has enjoyed an economic and financial benefit from not being in compliance with its reclamation plan, financial assurance, and SMARA. The Quarry's costs to provide a financial assurance to guarantee reclamation of the site, and additionally to correct violations of the reclamation plan, are not factored into the Quarry's product price, since no financial assurances are posted and no corrections were performed (specifically the highwalls have been over excavated, the depth of the Quarry floor has been exceeded, the Quarry has encroached upon a set back zone, erosion control and winterizing efforts have not been performed, no revegetation test plot program has been established and monitored). Other mine operators must factor into their product prices the costs of maintaining compliant operations.

**G. Any Other Matters Justice May Require** -- This criterion is necessary to ensure that "the quality of Justice / Mercy is not strained" in either direction.

SMARA has been in effect since 1976, and the requirements of AB 3551 (i.e. PRC §2207) have been in effect since 1990. Ignorance of the existence of these laws and their requirements may not make a reasonable argument; however, there may be other considerations that can be taken into account that may temper a decision.

- 1. Has the non-compliant mining operation caused, or have the potential to cause, serious property damage to neighboring lands, roads, or other community facilities; or cause irreparable damage to the environment if left to operate as is; or threaten the safety or health of humans?
- 2. How truthful is the appellant in his/her petition? Does the argument for appeal seem reasonable and logical, supported by documented facts, or is the appellant trying to obfuscate facts or events?
- 3. What is the culpability of the lead agency in allowing the continuance of a non-complying operator. Although the operator ultimately must bear full responsibility for his/her operation and its effects, what steps did the lead agency take to encourage or discourage compliance?

4. Has the operator truly made "good-faith" efforts to comply, or continually missed deadlines for compliance? Has the operator repeatedly ignored direct warnings from the lead agency or from the Department?

5. Have unforeseen and unavoidable personal circumstances delayed or prohibited the operator from complying fully?

**Analysis:** Based on the evidence, the Executive Officer believes with respect to the criteria cited above:

(1) The noncompliance of the Quarry with its reclamation plan and the Surface Mining and Reclamation Act of 1975 has potential to bring long term harm to neighboring properties and the natural environment, and to create a safety hazard to humans. Without a financial assurance, there is no secured funding to guarantee the reclamation of the mine site according to the requirements of the approved reclamation plan; thereby leaving a environmental hazard and blight on the landscape. Continuing to operate the site clearly exacerbates the situation of increasing the amount of lands disturbed by the mining process with no guarantee of funds to reclaim those lands.

(4) The Quarry has not performed "good faith" efforts to come into compliance or correct the noticed violations. On the contrary, the Quarry has continually demonstrated an intentional disregard for the law and refusal to act in a positive fashion to correct deficiencies or mitigate its long history of noncompliance.

Criteria (2), (3), and (5) not applicable.

**EXECUTIVE OFFICER RECOMMENDATIONS:** In light of the failure of the Quarry to cease and desist all surface mining operations in compliance with the SMGB's Order of July 11, 2002, the Executive Officer recommends the following administrative penalty be approved by the SMGB. According to PRC §2774.1 (c), orders setting administrative penalties become effective upon issuance. The maximum amount per day per violation authorized in statute is \$5,000 per day.

**Violation:** Conducting surface mining operations in violation of an Order to Cease and Desist All Surface Mining Operations

**Penalty Amount of \$5,000 per day** to commence from September 12, 2002, which is the effective date of the Order to Cease and Desist All Surface Mining Operations, and to continue daily until the Diamond Quarry ceases all surface mining operations and

***EXECUTIVE OFFICER'S REPORT***

remains inoperative until a financial assurance amount and instrument for the operation are approved by the State Mining and Geology Board.